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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 403

MISSISSIPPI POWER & LIGHT COMPANY, MISSISSIPPI MUNICIPAL ASSOCIATION, AND CITY OF CLINTON,
Petitioners,
v.
CAPITAL ELECTRIC POWER ASSOCIATION,
Respondent.

MISSISSIPPI POWER & LIGHT COMPANY AND MISSISSIPPI MUNICIPAL ASSOCIATION,
Petitioners,
v.
DELTA ELECTRIC POWER ASSOCIATION,
Respondent.

PETITION FOR REHEARING

SHERWOOD W. WISE
WISE, SMITH & CARTER
Electric Building
Jackson, Mississippi

FRED B. SMITH
Ripley, Mississippi

GARNER W. GREEN
JOSHUA GREEN
GREEN, GREEN & CHENEY
Electric Building
Jackson, Mississippi
Attorneys for Mississippi Power & Light Company

CHARLES C. JACOBS, JR.
Commerce Building
Cleveland, Mississippi
Attorney for Mississippi Municipal Association

E. W. STENNETT
Barnett Building
Jackson, Mississippi
Attorney for City of Clinton, Mississippi

RICHARD M. MERRIMAN
REID & PRIEST
910 - 17th Street, N. W.
Washington, D. C.
Attorney for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR REHEARING

PRELIMINARY STATEMENT

After due submission, this Court upon November 12, 1963, decided this cause as shown by Appendix "A" hereto, and conformity with the State Court's decision was in progress. However, upon November 30, 1963, the writer, Garner W. Green, whose vision is seriously impaired, heard for the first time on the

record from The Printing House For the Blind, the article in *Reader's Digest,* December 1963, entitled "The REA—A Case Study of Bureaucracy Run Wild." The President of the Company, R. B. Wilson, and General Counsel, Sherwood W. Wise, were in route to New York, but the writer at once wired them that the facts recited in this article constituted such cogent evidence that a petition to rehear should be filed. This was authorized December 3, 1963.

PARTIES

The parties Petitioner in Cause No. 42,480 are Mississippi Power & Light Company (Petitioner), Mississippi Municipal Association (Intervenor) and City of Clinton (Intervenor). The parties Petitioner in Cause No. 42,535 are Mississippi Power & Light Company (Petitioner) and Mississippi Municipal Association (Intervenor). In both causes, said Petitioner and said Intervenors are collectively sometimes referred to as "Petitioner".

STATEMENT OF FACTS

This cause involves the gravest constitutional and statutory questions. It vitally affects the rights of every municipality to contract in advance for its utility needs so as to provide for future urban growth. At issue also is the right of a private utility furnishing central station power in a city to contract and build for such future needs—central station capacity must be built in advance.

The legislative history clearly demonstrates that the limited purpose of Congress in establishing the REA program was, through the subsidy of low-interest loans and tax exemption, to bring electricity to rural areas

where central station service was not available; solemn assurances were then repeatedly given that these governmental subsidies would not be mis-used or perverted outside of this limited purpose to destroy central station suppliers.

That here at issue is whether Petitioner may be vouchsafed the protection intended by Congress as against those cooperatives thus violating their limited purpose.

Petitioner having filed its Jurisdictional Statement herein—the case involving both an appeal as of right as to contract impairment, and a petition for writ of certiorari as to Federal questions—the Respondents made several responses thereto and Petitioner further replied. This Court upon Tuesday, November 12, 1963, entered an order, Appendix "A", whereunder the appeal was dismissed and certiorari was denied.

Even assuming the decision as to dismissing the appeal to be correct, Petitioner, with deference, insists that the refusal of certiorari is basically so contrary to Petitioner's rights in the several municipalities under the Federal statutes as that therefor certiorari should be granted limited to Question V in the Jurisdictional Statement, namely:

> "V. By reason of Title 7, U.S.C., Ch. 31, Section 901, et seq., Ch. 432, Title I, Section 4, 49 Stat. 1365, as amended, and said loan to Associations, has Appellant justiciable rights against Association?"

Since that contained in the article in *Reader's Digest*, made Appendix "B" hereto, supplies the requisite background, Petitioner's rights as against the Associations must be defined.

OPINIONS BELOW

The opinions below are: *Delta Electric Power Association* v. *Mississippi Power & Light Company,* Miss. , 149 So. 2nd 504, Suggestion of Error overruled without opinion, Appendix 1-A to Jurisdictional Statement; and *Capital Electric Power Association* v. *Mississippi Power & Light Company,* Miss. , 150 So. 2nd 534, Suggestion of Error overruled without opinion, Appendix 1-B to Jurisdictional Statement.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. 1257(3). Petitioner specifically as against Respondents claimed rights under and by virtue of Title 7, U.S.C., Section 901, et seq., Ch. 432, Title I, Sec. 4, 49 Stat. 1365, which were denied. Sections 902 and 913 provide:

> "The Administrator is authorized and empowered to make loans in the several States and Territories of the United States for rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service and for the purpose of furnishing and improving telephone service in rural areas, as hereinafter provided; to make, or cause to be made, studies, investigations, and reports concerning the condition and progress of the electrification of and the furnishing of adequate telephone service in rural areas in the several States and Territories; and to publish and disseminate information with respect thereto."
>
> * * *
>
> "As used in this chapter the term 'rural area' shall be deemed to mean any area of the United States not included within the boundaries of any city, village, or borough having a population in

excess of fifteen hundred inhabitants, and such term shall be deemed to include both the farm and nonfarm population thereof; the term 'farm' shall be deemed to mean a farm as defined in the publications of the Bureau of the Census; the term 'person' shall be deemed to mean any natural person, firm, corporation, or association; the term 'Territory' shall be deemed to include any insular possession of the United States."

ARGUMENT

Conceding the correctness of the decision by the Supreme Court of Mississippi of the local questions, yet Petitioner invoked as against the attack made on it the provisions of Title 7 U.S.C., Sections 901, et seq. As a matter of law, no efficacy was vouchsafed Petitioner's rights thereunder and they were totally rejected by the State Court; but thereasto it now appears that Petitioner can successfully make proof of those matters thus set forth in the *Reader's Digest* article, if given the opportunity to introduce the facts. In the light of that contained in said article, we substantially reiterate our reasons for certiorari thus:

Those affected by this legislation are entitled, with deference, to assume as 100% accurate those things said by the bill expressly and by those who fathered its enactment, especially Senator Norris. These are ample aid for judicial construction: Under authority granted by the Emergency Relief Appropriation Act, a temporary Rural Electrification Administration had been created by Executive Order, prior to 1936, as a means of relieving unemployment and the Act had its origin in Senate Bill No. 3483 (75th Cong., 2nd Sess.), which was designed to establish the Rural Electrifica-

tion Administration on a permanent basis and for a different purpose.

The Bill was reported out by the Senate Committee on Agriculture and Forestry without hearings. However, Senator Norris, who was in charge of the Bill on the floor of the Senate, stated, in response to inquiries from other Senators, that the Bill was not intended to authorize loans *"for the purpose of electrifying a rural area which is now supplied"*; that "where a plant is now in existence which is adequately supplying a certain area with electricity none of the money provided by the Bill could be used for that purpose"; and "There is no intention of going into a farming community which is already supplied electric current."

The report of the Senate Committee on Agriculture and Forestry states that the Committee had referred the Bill to the Secretary of Agriculture, to the temporary REA, to the Federal Power Commission, and to the Department of the Interior, and that each of these agencies had approved the Bill. (Sen. Rep. No. 1581, 74th Cong., 2nd Sess.). A number of amendments recommended by the Senate Committee had been inserted at the suggestion or request of the temporary REA (80 Cong. Rec. 2752, 2755, 2758).

The House Committee on Interstate and Foreign Commerce (Congressman Rayburn, Chairman) held extensive hearings upon the Bill as passed by the Senate. At the request of Chairman Rayburn, Mr. Cooke appeared before the House Committee, explained the Bill, and stated that he was appearing in its support. Report of Hearings, pp. 2, 4. In response to questions from members on the House Com-

mittee, Mr. Cooke testified that it was contemplated by the Bill that distribution lines would *"receive current from established utilities"*; that the bill was intended to carry on the practices of the temporary REA; that the practice of the temporary REA was to use *"the current of private companies or other existing plants"* and to build no *"competing transmission lines"*; that it was not the purpose of the Bill "to furnish electricity or to lend money for anyone to get electricity *where it is available*"; and that the "central station service" provision was intended to authorize loans to construct facilities to serve residents of rural areas who were receiving service from *"individual Delco plants"* but did not have *"the normal service from a power line"*.

In the course of the House debate, Congressman Rayburn, who was in charge of the Bill, stated:

> "May I say to the gentlemen that we are not, in this bill, intending *to go out and compete with anybody.* By this bill we hope to bring electrification to people who do not now have it. This bill was not written on the theory that we were going to punish somebody or parallel their lines or enter into competition with them." (80 Cong. Rec. 5283, 1936).

In the course of the House Debate, Congressman Fletcher, speaking in support of the Bill, said:

> *"There is no desire to provide loans either where service exists or where, legitimately and in truth, the power companies are about to provide service."* (80 Cong. Rec. 5308).

In an Opinion dated November 24, 1942, the Solicitor of the Department of Agriculture, in construing

REA's authority to make loans "for the furnishing of electrical service to persons in rural areas who are not receiving central station service", said:

> "A study of the debates in Congress and the Committee hearings indicates that this provision was inserted because of a legislative intent to exclude loans for the purpose of paralleling existing systems and thus creating competition with established utilities." (Opinion No. 4506, Hearings, Senate Subcommittee on Agriculture Appropriations for 1951, 81st Cong., 2nd Sess., p. 1378).

With respect to the meaning of "central station service" as used in Section 4 of the Act, W. Carroll Hunter, Solicitor of the Department of Agriculture, in Opinion No. 5247, dated November 3, 1948, said:

> "Congressional debates and committee hearings contain frequent references to the clause in question; but, as has been noted, these discussions were generally concerned with the question of competition. The term 'central station service', in itself, was generally envisioned as relating to the difference between the small Delco plant serving the individual farm (which was, clearly, not receiving 'central station service'), and the utility company's high line, carrying 2,200, 6,600 or some other common distribution voltage, which passes down the road to serve others. *This distinction serves to emphasize the point that the interest of Congress, in this provision, was to prevent competition with established utilities.* * * *."

It is judicially known that these loans to the Respondents are on a basis of 2% interest and that the current cost of money to the United States is nearly 4%. Too, these Respondents are assumed to be tax

exempt insofar as the Federal income tax is concerned and the cost to the Federal Government of this immunity is stated to be $150,000,000 by Robert T. Patterson, former professor of economics at Claremont Men's College in his book, "The Tax Exemption of Cooperatives". Besides, the Petitioner is compelled to pay not only Federal but State income taxes aggregating approximately 60% for the general welfare.

In addition, at this date more than 98% of the farms in the nation have been electrified and are receiving all electricity they fain would have. Officials of the REA recognized that Congress expected rural electric cooperatives to be almost exclusively distributors of electricity. In 1936, the first Administrator of the REA program told a committee of the House of Representatives that "in 99 instances out of 100 they are going to buy current from existing plants". Out of the new customers, five out of six, the Court may judicially know, are not in rural territory, but are adjacent to the fast developing urban population and within the area for which central station power has been planned and installed. Such urban customers should be classified as such and should not, as against those who dwell within the municipality, be vouchsafed a fundamental exemption from municipal regulation and taxation.

In addition, it may be judicially noted that the REA is actively promoting generation and transmission lines at government expense; and it is claimed that the average cost from the investor-owned power companies is less considerably than that being obtained from such REA operations. Furthermore, thereasto a profound secrecy, certainly impenetrable to Petitioner, is sought to be maintained.

The deference due Congressional discussion is exemplified in *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 10 L. ed. 2nd 915, 935; and *Commissioner of Internal Revenue* v. *Church*, 335 U.S. 632, 687, 93 L. ed. 288, 321. Herein, the terms of the statute are express. With deference, construction is not called for. *Rosenberg* v. *Fleuti*, 374 U.S. 449, 10 L. ed. 2nd 1000, 1003, 1009. Those who induced Congress thus to legislate made the representations upon which, with confidence, Petitioner relies. Herein Petitioner is not the actor but is a property owner claiming Federal statutory rights. The Petitioner has had that property destroyed, those rights forfeited, when Respondents were burdened with those restraints and restrictions thus expressly and explicitly declared by Congress. That at issue is whether Petitioner, thus attacked—not attacking—may invoke in defense the provisions expressly put in the statute and expressly explained by those who spoke with authority. *Hovey* v. *Elliott*, 167 U.S. 409, 42 L. ed. 215.

Herein, there is not, with deference, a primary question of the standing to sue. *Abington School District* v. *Schempp*, 374 U.S. 203, 10 L. ed. 2nd 844; *Chicago* v. *Atchison, Topeka & Santa F. R. Co.*, 357 U.S. 77, 2 L. ed. 2nd 1174, cited in *Hanson* v. *Denckla*, 357 U.S. 235, 2 L. ed. 2nd 1283. Both the Commission and the State Court have denied Petitioner the right to interpose the provisions of this REA Act as a defense; but have expressly rewritten the Federal statute so as to authorize Respondents to preempt an area as a public utility, to oust Petitioner from service therein as to persons with whom it has a constitutional right to contract, and compelled a discontinuance of valid con-

tracts to Clinton and Winona, each being municipalities containing more than 4,000 people. This question is two-fold: (a) Has Petitioner those statutory rights openly declared and publicly proclaimed? And if not, (b) May Mississippi, by its Public Utility Act and its construction thereof, so subvert the Supremacy Clause as that Mississippi's statute and not the Federal statute is the law of the land? Compare *Capital Electric Power Association* v. *McGuffee*, 226 Miss. 227, 83 So. 2nd 837; *Capital Electric Power Association* v. *Mississippi Power & Light Company*, 224 Miss. 40, 140 So. 2nd 286; *Capital Electric Power Association* v. *Hinson*, 230 Miss. 311, 92 So. 2nd 867; *Delta Electric Power Association* v. *Mississippi Power & Light Company*, Miss. , 149 So. 2nd 504; *Capital Electric Power Association* v. *Mississippi Power & Light Company*, Miss. , 150 So. 2nd 534.

The interplay between Federal and State power in a question of this character can only be solved here. Petitioner having relied upon the fair expressions in the statute and the promises of those who produced the REA Act, we do protest that this Court will not permit the promise to be kept to the ear but broken to the heart.

Under the evidence which can be produced in accordance with the *Reader's Digest* article and the law as written, this Court must lay down the line of demarcation and protect Petitioner in virtue of the express provisions in the statute contained, whereas against the

laws of Mississippi, with deference, are impotent under the Supremacy Clause.

Certiorari is respectfully prayed.

Respectfully submitted,

SHERWOOD W. WISE
WISE, SMITH & CARTER
Electric Building
Jackson, Mississippi

FRED B. SMITH
Ripley, Mississippi

GARNER W. GREEN
JOSHUA GREEN
GREEN, GREEN & CHENEY
Electric Building
Jackson, Mississippi
Attorneys for Mississippi Power & Light Company

CHARLES C. JACOBS, JR.
Commerce Building
Cleveland, Mississippi
Attorney for Mississippi Municipal Association

E. W. STENNETT
Barnett Building
Jackson, Mississippi
Attorney for City of Clinton, Mississippi

RICHARD M. MERRIMAN
REID & PRIEST
910 - 17th Street, N. W.
Washington, D. C.
Attorney for Petitioners

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

.....

Attorney for Petitioners

APPENDIX "A"

SUPREME COURT OF THE UNITED STATES

MISSISSIPPI POWER & LIGHT CO. ET AL. v.
CAPITAL ELECTRIC POWER ASSOCIATION ET AL.

APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

No. 403. Decided November 12, 1963

PER CURIAM.

The motions to dismiss are granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.

APPENDIX "B"

Article from December, 1963 issue of Reader's Digest

BY KENNETH O. GILMORE & EUGENE H. METHVIN

Created in 1935 to bring electricity to farm areas, the Rural Electrification Administration has grown into a many-headed monster that is eating into the entire electric-power industry—and into the taxpayer's pocketbook as well

The REA—
A CASE STUDY OF BUREAUCRACY RUN WILD

The routine government press release began with a familiar ring: "Three thousand rural consumers will receive electricity for the first time as a result of loans approved by the Rural Electrification Administration." But down in the fine print the picture changed. Instead of helping rural people solely, over half the $4,063,000 handout went to one electric cooperative in the REA network, enabling it to supply power to a huge radar-equipped tracking center at Florida's Eglin Air Force Base. Worse, the

federal subsidy allowed the tax-free co-op to grab business from a long-established taxpaying private utility.

Stop and study this astounding case. Last winter the Air Force urgently needed extra electricity for its new space-research installation. A private investor-owned utility, the Gulf Power Co., offered to furnish the electricity from its nearby power system. Having served the base for 22 years, it was easily able to run in additional high-voltage lines. Moreover, its vast transmission grid guaranteed instant emergency service in the event of any power failure.

But an REA co-op—with no standby emergency system, no high-voltage lines into the base, and with its only adequate source of power 60 miles away in Alabama—submitted a slightly lower bid. And, astonishingly, last February the co-op was awarded the contract. Two months later REA announced it was turning $2,225,000 over to the co-op so it could build the high power line and install the necessary facilities, including a 10,000-kilowatt standby generating plant.

Such senseless spending and ruthless squashing of private enterprise are not all that is involved. This single deal will impose a $2,645,702 penalty on all taxpayers. First, the Florida co-op pays only a trifling two-percent interest on its $2,225,000 loan. This rate for REA loans was fixed by Congress in 1944. Today it is at least two percent below the normal commercial rate and about *half what it costs the U.S. government to borrow long-term money.* Thus, over the 35-year life of the loan, this two-percent subsidy will cost the Treasury $1,123,202. Second, by diverting the contract from the privately owned Gulf Power Co., the REA has deprived the government of $43,500 a year in corporation taxes.

Such cases are cropping up across the nation. In Indiana tax-fed co-ops are pirating away millions of dollars'

worth of business from private enterprise. And they're doing it in Colorado, Alabama, Kentucky, Arkansas, Louisiana, Illinois—almost everywhere the electric cooperatives are doing business.

No federally aided program better illustrates how big government, with its foot once in the door, arrogantly pushes its way into areas never contemplated by its original sponsors. Nearly three decades ago the REA was set up to bring electricity to remote rural areas. Today close to 98 percent of the farms in America have electric service, about half from REA co-ops and half from private power companies, a brilliant achievement for all concerned. Yet, with the job now virtually completed, REA continues to expand.

Its 1005 co-ops serve over 17 million persons. The number of co-op clients is increasing by 100,000 each year, and five of every six of these are non-farm. Co-ops can boast well over 300,000 industrial and commercial customers with close to 50,000 signed up in the last five years. Their power lines are plugging into factories, airports, drive-ins, lumber mills, cotton gins, sawmills, locker plants, oil pumping stations, suburban housing developments, even nightclubs. Co-ops today sell more than 60 percent of their power to non-farm buyers; and more than one fourth of the tax-free revenue collected by the REA's tax-supported co-ops comes from commercial enterprises. An REA survey ordered by Congress showed that 187 of these supposedly rural co-ops were doing business in towns with populations of over 1500.

Despite these prosperous operations, the administration demanded a whopping 425 million dollars for REA loans in fiscal 1964. This record-breaking sum is three times the amount requested three years ago.

Encouraged by the REA's affluence, co-ops are scrambling for all the two-percent cash they can get. Since 1960,

two thirds of all co-ops have come back to the REA for more money. This easy-money philosophy not only needlessly drains government funds; it is allowing REA co-ops to extend themselves far beyond their original bounds in these ways:

First, REA co-ops with their two-percent subsidy and tax-free advantages are competing unfairly with private business. When the late Sam Rayburn introduced the REA Act in Congress, he said, "The bill was not written to punish somebody or parallel their lines or enter into competition with them."

This, however, is precisely what has been happening. Not long ago a textile plant going up at Hemingway, S. C., was within 500 feet of a private power line. Yet a tax-fed co-op bid below the local power company's filed fee and strung in an estimated $14,000 worth of line to get the contract. Lost tax revenue from the private utility: $3100.

The Otter Tail Power Co., with a nearby power line, was preparing to supply electricity requested by an Air Force radar installation just west of Finley, N.D. A tax-aided local co-op grabbed the contract by installing 6½ miles of line.

"True competitive bidding cannot possibly be present in these situations," says Albert V. Hartl, president of Otter Tail Power. "Investor-owned utilities in most states have a standard rate set by the state utility commission that cannot be altered. The co-op can make its own rates to fit any special situation."

Second, REA has barged into the industrial-loan business, an activity ridiculously far removed from its original design. Under the law REA has always financed appliances, farm-chore machinery and home wiring in rural areas. But in July of 1961, without even consulting Congress, REA issued new administrative regulations authorizing loans for purchase and installation of electrical ma-

chinery and equipment for agricultural, commercial and industrial enterprises.

The first such loan was for $25,000 so that a co-op customer in North Dakota could buy gravel-crushing and -washing machinery. Before long $22,000 was handed out to a ski resort in Illinois to buy and install snow-making equipment, motors for rope tows and a chair lift, and outdoor lights. It was a nifty deal; the co-op charged four percent for its two-percent money and the resort simultaneously purchased about a million kilowatts of power a year from the co-op. "It would take a lot of farmers to account for that much," said Charles Youtzy, the co-op manager.

A stunned House Agricultural Committee warned in 1962 that REA's interpretation of the law in making these loans was "inconsistent with the original intent of Congress." Yet REA boasted last winter that it had approved 14 of these special loans totaling $1,232,068—enabling co-ops to become involved in enterprises ranging from seed-potato processing to lace manufacture.

Third, REA-subsidized co-ops use their tax-free earnings for a variety of private, profit-making ventures. More than half of the $589,151,000 belonging to co-ops is drawing interest in government bonds. Another $146,525,000 is invested even more profitably in such institutions as savings-and-loan associations, savings banks and "associated enterprises." An Arkansas co-op remodeled its headquarters building with Washington's two-percent money while investing $35,000 of its own funds in a shirt factory. Butler Rural Electric Cooperative, Inc., of Hamilton, Ohio, had enough tax-free earnings on hand to buy up roughly $55,000 worth of shares in the Cincinnati Gas & Electric Co., a private utility. Since 1936 this cooperative has borrowed $1,912,805 from the REA.

Fourth, many co-ops have been allowed to draw more funds from REA's kitty despite remarkable records of

prosperity. REA recently admitted that by June 1962 217 borrowers had piled up cash and liquid reserves equaling more than 20 percent of the entire value of their plants. A co-op serving between the growing towns of Marshall, Texas, and Shreveport, La., accumulated $1,155,000 in investments and current assets, making it one of the nation's richest. Instead of dipping into this plentiful reserve to build new lines, it borrowed $360,000 from the REA at two percent.

On the fringes of sprawling Columbus, Ohio, are five towns served by REA lines since 1944. By 1959 their populations had quadrupled to 15,500 and the co-op averaged a healthy 19 customers per mile of line. Yet that summer it borrowed $2,500,000 more from REA to hook up 4700 new customers.

In the booming suburbs of Washington, D.C., the Southern Maryland Electric Cooperative, Inc., draws 34 percent of its revenue from commercial and industrial customers and serves Lexington Park, Md., a town of 7000. Nevertheless, in April 1958 it needlessly sought almost three million dollars of REA's two-percent money to finance further expansion.

Fifth, and most alarming, REA is pouring out gigantic funds for the construction of co-op power plants. Set up primarily to *carry* power, REA is now moving into the power *producing* field. During the past two years REA has approved power-type loans to 35 cooperatives totaling 319 million dollars. Last January, more than 60 percent of the funds requested in the REA budget for new-loan authorizations were earmarked for generating plants and their transmission facilities, commonly called G&T loans.

Until the new REA chieftain Norman Clapp came into office in 1961, REA's own regulations had specifically stated that G&T loans should be made to co-ops only when the power was not available from private companies, or

when these companies charged too much for supplying the co-ops with wholesale electricity. In May 1961, the REA issued Bulletin 20-6 which justified loans for power plants "to protect the security and effectiveness of REA-financed systems." This vague language gave the REA leeway to hand out money for generating systems, whether or not they were actually needed.

Soon thereafter, 16 Indiana co-ops were handed 60 million dollars, the largest single loan in REA history, to build a 198,000-kilowatt generating station and 1552 miles of transmission lines. It was a pure giveaway, for private enterprise with adequate power facilities was able and willing to supply energy to these co-ops at reasonable rates.

No G&T loan better illustrates REA's hasty and secretive techniques than a 22-million-dollar deal involving Colorado-Ute Electric Association of Montrose, Colo. Negotiations for this mammoth handout quietly took place during 1961. When a reporter sought information, Hubert W. Kelley, Jr., of the REA responded: "Every detail of a loan application is private and confidential. If that's wraps, we are wrapping it."

Private-utility officials journeyed to Washington to explain to Congress why such a loan was wasteful and unwise but, before they could finish, REA announced that it was granting the loan. Its haste is made even more incredible by the fact that, at the time, REA engineers did not know where the proposed plant would be built nor what would be the source or the cost of its fuel or the means of transmitting its power.

Such REA loans only subsidize inefficiency, for it is a proven fact that big plants belonging to private utilities can produce electricity on a large scale at much lower cost than the smaller co-op systems. REA's own statistics show that electricity sold by REA-financed plants cost the

co-ops 30 percent more than electricity they bought from taxpaying private companies.

When investor-owned utilities propose to expand by offering securities to the public, state and federal laws require them to make full and complete disclosures. Yet REA has never held public hearings to collect all the facts surrounding these huge loans which are footed by the taxpayers. This double standard has imposed a severe handicap on private companies. In Alabama a co-op was recently granted a 20-million-dollar G&T loan. Unable to find out what facts had persuaded Washington, the affected private utility went to the Alabama courts, finally forcing REA and the co-op to show the documents they had refused to disclose.

"We found that the co-op's application to the REA was loaded with accusations against our company," Walter Bouldin, vice president of the Edison Electric Institute and president of the Alabama Power Co., told a Congressional committee last spring. "We were able in open hearings to refute these accusations. But the important point is that REA had accepted these charges and evidently based its finding upon them. Our company was accused, tried and convicted with no opportunity on our part to confront the witnesses against us."

How much further will this reckless drive to establish a vast and ever more costly power empire go before it is stopped? Clearly the vast majority of co-ops no longer need the subsidies they were originally granted to help them get started. They can raise their own capital for expansion as do private companies by selling bonds on the public market or to their own members. But with the welcome sign out in Washington, co-ops find it hard to forego the easy-loan temptation. One co-op manager recently confided: "I couldn't face my people back home if I didn't borrow all the money I could from the government."

Herein lies perhaps the greatest danger of this gravy train: it fosters the insidious idea that federal assistance once granted should last forever. The peak of this deadening dependence on Washington was reached when a co-op manager told a Senate committee that the U.S. government has a duty to supply his co-op "with all the power they need, today, next year and thereafter, at 100 percent of their requirements."

To understand what REA was intended to be and *could* be, consider a Georgia area into which REA went in 1936. It was one of the South's most wretched economic regions, comprising seven mountainous counties around the town of Dalton. The mountain people were helped to organize the North Georgia Electric Membership Corp., which tottered on the verge of bankruptcy for three years. But with a new manager, W. L. Manton, the former owner of a small private utility put out of business by the Tennessee Valley Authority, things soon began to improve.

The biggest boost came when Chattanooga's postwar suburban sprawl lapped over into the co-op's once rural area, and hundreds of new customers drew their electricity from its lines. Despite the huge job of meeting this heavy demand, the co-op has not since 1949 gone back to Washington for another penny. Instead, it has dug into its own profits for the half million dollars needed yearly to beef up its lines. To top it all, five years ago the co-op's 22,000 members voted overwhelmingly to pay off their debt to Washington.

"We appreciated the government's help to get us started," says Manton, "but we were not going to impose on the taxpayers."

In June 1962 he proudly presented REA with a check paying off in full the $1,631,000 the co-op had borrowed from the government. During REA's entire history *only nine co-ops have thus fulfilled REA's motto, "Owned by*

those we serve," by paying off their government loans out of their earnings!

This is an incredibly poor record, yet it shows what can be done. In Lebanon, Ind., one of these co-ops is now wholly member-owned. Within commuting distance of Indianapolis, its area is so booming that in the next decade it must make tremendous cash outlays to supply twice as many consumers and four times as much power. But are these Hoosiers running back to Washington for more taxpayer-subsidized loans? Not at all. They hired a Purdue University economist and are trying to devise a plan to finance their expansion by selling their own bonds to their own members.

Such independence must be encouraged. Only a courageous Congress can do this, by ending the two-percent subsidy except in those few isolated areas where co-ops obviously cannot survive without federal help. President Eisenhower urged co-op leaders to set up an independent bank similar to the one already operating successfully under the Farm Credit Administration. Such an institution can raise on the open market whatever expansion capital is needed beyond what co-ops can muster from their own profits and their shareholding members.

This is but one of several realistic methods whereby co-ops **can** stand on their own feet. The simple fact is that they no longer need to be propped up by the taxpayers. Even today's zealous advocate of increased federal subsidies, REA boss Norman Clapp, had to admit after intensive Congressional questioning that "someday" co-ops "will be in a position to provide all these services for themselves."

Why not *now*, Mr. Clapp?

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